

three years after termination of the associated person with respect to whom the filing was made.

(e) Forms MSD-4, Forms MSD-5 and amending statements are to be filed with Director, Division of Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429. The date that the Corporation receives a Form MSD-4, Form MSD-5, or amending statement shall be the date of filing. A Form MSD-4, Form MSD-5, or amending statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5 or amending statement has been completed in accordance with the applicable requirements or that any information contained therein is true, current, complete or not misleading. Every Form MSD-4, Form MSD-5, or amending statement filed with the Corporation under this part shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. 78q(c)(1)) and a *report, application, or document* within the meaning of section 32(a) of the Act (15 U.S.C. 78ff(a)). Forms MSD-4 and MSD-5 can be obtained from the FDIC regional office for the area in which the bank is located.

[42 FR 40891, Aug. 12, 1977, as amended at 45 FR 37179, June 2, 1980; 60 FR 31384, June 15, 1995]

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

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AUTHORITY: 12 U.S.C. 1817, 1818, 1819.

SOURCE: 44 FR 43261, July 24, 1979, unless otherwise noted.

§ 344.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that purchasers of securities in transactions effected by an insured nonmember bank are provided adequate information concerning the transactions. This part is also designed to ensure that insured nonmember banks maintain adequate records and controls with respect to securities transactions they effect.

(b) *Scope.* This part is issued by the Federal Deposit Insurance Corporation (FDIC) and applies to insured banks which are not members of the Federal Reserve System (*bank*).

§ 344.2 Definitions.

For purposes of this part:

(a) *Collective investment fund* means funds held by a bank as fiduciary and, consistent with local law, invested collectively: (1) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act, or (2) in a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code;

(b) *Customer* shall mean any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account, for which a bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities which are the subject of the transactions;

(c) A bank shall be deemed to exercise *investment discretion* with respect to an account if, directly or indirectly, the bank: (1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account, or (2) makes recommendations as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

(d) *Periodic plan* means any written authorization for a bank acting as

agent to purchase or sell for a customer, a specific security or securities, in specific amounts (calculated in security units or dollars) or (to the extent of dividends and funds available) at specific time intervals, and setting forth the commission or charges to be paid by the customer in connection therewith, or the manner of calculating them;

(e) *Security* means any interest or instrument commonly known as a *security*, whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term *security* does not include:

- (1) A deposit or share account in a federally insured depository institution,
- (2) A loan participation,
- (3) A letter of credit or other form of bank indebtedness incurred in the ordinary course of business,
- (4) Currency,
- (5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited,
- (6) Units of a collective investment fund,
- (7) Interests in a variable amount (master) note of a borrower of prime credit or
- (8) U.S. Savings Bonds.

§ 344.3 Recordkeeping.

Every bank effecting securities transactions for customers shall maintain the following records of those transactions for at least three years:

(a) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. These shall include the account for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(b) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all other debits and credits pertaining to each account including all receipts and disbursements of cash;

(c) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

- (1) The accounts for which the transaction was effected;
 - (2) Whether the transaction was a market order, limit offer, or subject to special instructions;
 - (3) The time the order was received by the trader or other bank employee responsible for effecting the transaction;
 - (4) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or cancelled;
 - (5) The price at which the order was executed; and
 - (6) The broker/dealer utilized;
- (d) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year.

Nothing contained in paragraph (d) of this section shall require a bank to maintain the records required by this section in any given manner, *Provided*, That the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information.

[44 FR 43261, July 24, 1979; 44 FR 45375, Aug. 2, 1979]

§ 344.4 Form of notification.

Every bank effecting a securities transaction for a customer shall maintain for at least three years and, *except* as provided in § 344.5, mail or otherwise furnish to such customer *either* of the following types of notifications:

- (a) (1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and
- (2) If the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank

and the customer, a statement of the source and the amount of any remuneration to be received; *or*

(b) A written notification disclosing:

(1) The name of the bank;

(2) The name of the customer;

(3) Whether the bank is acting as agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity;

(4) The date and time of execution (or the fact that the time of execution will be furnished, within a reasonable time, upon written request of the customer), and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from the customer in connection with the transaction;

(6) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, *provided, however*, In the case of U.S. Government securities, Federal agency obligations and municipal obligations, paragraph (b)(6) of this section shall apply only with respect to remuneration received by the bank in an agency transaction; and

(7) (i) The name of the broker/dealer utilized; or (ii) where no broker/dealer is utilized, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request.

§344.5 Time of notification.

The time for mailing or otherwise furnishing the written notification described in §344.4 shall be five business days from the date of the transaction, or if a broker/dealer is utilized, within five business days from the receipt by the bank of the broker/dealer's confirmation, *but* the bank may elect to use the following alternative procedures if the transaction is effected for:

(a) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification within the above prescribed time period at no additional cost to the customer;

(b) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, mail or otherwise furnish to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;

(c) Accounts where the bank exercises investment discretion in an agency capacity, in which instance:

(1) The bank shall mail or otherwise furnish to each customer, at least once every three months, an itemized statement that specifies the funds and securities in the custody or possession of the bank at the end of such period, and all debits, credits, and transactions in the customer's account during such period; and

(2) If requested by the customer, the bank shall mail or otherwise furnish to each such customer within a reasonable time the written notification described in §344.4. The bank may charge a reasonable fee for providing the information described in §344.4;

(d) A collective investment fund, in which instance the bank shall at least annually furnish to the customer a copy of the financial report of the fund, *or* provide notice that a copy of the report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered for each participating account. This report shall be based upon an audit;

(e) A periodic plan, in which instance the bank shall mail or otherwise furnish to the customer, as promptly as

possible after each transaction, a written statement showing: (1) The funds and securities in the custody or possession of the bank, (2) all service charges and commissions paid by the customer in connection with the transaction, and (3) all other debits and credits of the customer's account involved in the transaction; *provided* that upon the written request of the customer the bank shall furnish the information described in §344.4, *except* that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in §344.4.

[44 FR 43261, July 24, 1979, as amended at 45 FR 12777, Feb. 27, 1980; 45 FR 16167, Mar. 13, 1980]

§344.6 Securities trading policies and procedures.

Every bank effecting securities transactions for customers shall establish written policies and procedures providing:

(a) Assignment of responsibility for supervision of all officers or employees who: (1) Transmit orders to, or place orders with broker/dealers, or (2) execute transactions in securities for customers;

(b) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(c) Where applicable, and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(d) That bank officers and employees who make investment recommendations or decisions for the account of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all securities transactions made by them or on their be-

half, either at the bank or elsewhere, in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares or U.S. Government or Federal agency obligations, and all other transactions involving in the aggregate \$10,000 or less during the calendar quarter.

[44 FR 43261, July 24, 1979, as amended at 45 FR 12777, Feb. 27, 1980]

§344.7 Exceptions.

(a) The requirements of §§344.3(b) through 344.3(d) and 344.6(a) through 344.6(c) shall not apply to banks having an average of less than 200 securities transactions per calendar year for customers over the prior three-calendar-year period, exclusive of transactions in U.S. Government and Federal agency obligations.

(b) Activities of a bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this part; and

(c) Activities of foreign branches of a bank shall not be subject to the requirements of this part.

[44 FR 43261, July 24, 1979, as amended at 45 FR 12777, Feb. 27, 1980]

§344.8 Waiver.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

[60 FR 7111, Feb. 7, 1995]

PART 345—COMMUNITY REINVESTMENT

Sec.

345.3 Delineation of community.

345.4 Community Reinvestment Act statement.

345.5 Files of public comments and recent CRA statements.

345.6 Public notice.

345.7 Assessing the record of performance.